UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PRESIDIO COMPONENTS, INC., Plaintiff, v. AMERICAN TECHNICAL CERAMICS CORPORATION, Defendant.	Civil No. 08cv335 IEG (NLS)
AMERICAN TECHNICAL CERAMICS CORPORATION, Counterclaimant, v. PRESIDIO COMPONENTS, INC., Counterdefendants.	**ORDER VACATING CASE MANAGEMENT CONFERENCE** *** **SCHEDULING ORDER REGULATING DISCOVERY AND OTHER PRETRIAL PROCEEDINGS** **(Fed. R. Civ. P. 16)** **(Local Rule 16.1)** **(Fed. R. Civ. P. 26)** **(Patent Local Rules)**

The Court currently has on schedule a Case Management Conference (CMC) set for July 18, 2008. In a related case, 07cv893 IEG(NLS), the parties jointly notified the Court that they seek to dismiss that case and ask that all the remaining deadlines in that case apply to this case and be extended for 30 days. For good cause shown, the Court **VACATES** the CMC set for July 18, 2008, and **ORDERS**:

1. On or before ***August 4, 2008***, all parties shall exchange with all other parties a list of all expert witnesses expected to be called at trial. The list shall include the name, address, and phone

number of the expert and a brief statement identifying the subject areas as to which the expert is expected to testify. The list shall also include the normal rates the expert charges for deposition and trial testimony. On or before ***August 25, 2008***, any party may supplement its designation in response to any other party's designation so long as that party has not previously retained an expert to testify on that subject.

2. Each expert witness designated by a party shall prepare a written report to be provided to all other parties **no later than** ***November 17, 2008***, containing the information required by Fed. R. Civ. P. 26(a)(2)(A) and (B).

Except as provided in paragraph 15, below, any party that fails to make these disclosures shall not, absent substantial justification, be permitted to use evidence or testimony not disclosed at any hearing or at the time of trial. In addition, the Court may impose sanctions as permitted by Fed. R. Civ. P. 37(c).

3. Any party, through any expert designated, shall in accordance with Fed. R. Civ. P. 26(a)(2)(C) and Fed. R. Civ. P. 26(e), supplement any of its expert reports regarding evidence intended solely to contradict or rebut evidence on the same subject matter identified in an expert report submitted by another party. Any such supplemental reports are due on or before ***December 2, 2008***.

4. All fact discovery shall be completed on or before ***October 17, 2008***. All expert discovery shall be completed on or before ***January 10, 2009***.

"Completed" means that all discovery under Rules 30-36 of the Federal Rules of Civil Procedure must be initiated a sufficient period of time in advance of the cut-off date, so *that it may be completed* by the cut-off date, taking into account the times for services, notice, and response as set forth in the Federal Rules of Civil Procedure. All disputes concerning discovery shall be brought to the attention of the Magistrate Judge no later than thirty (30) days following the date upon which the event giving rise to the discovery dispute occurred. Counsel shall meet and confer pursuant to the requirements of Fed. R. Civ. P. 26 and Local Rule 26.1(a).

5. All motions, other than motions to amend or join parties, or motions in limine, shall be **FILED** on or before ***January 26, 2009***. Motions will not be heard or calendared unless counsel for the moving party has obtained a motion hearing date from the law clerk of the judge who will hear the

motion. **Be advised that the parties must file their moving papers within three (3) days of receiving the motion hearing date from the Court. Be further advised that the period of time between the date you request a motion date and the hearing date may be up to six weeks. Please plan accordingly**.

Briefs or memoranda in support of or in opposition to any pending motion shall not exceed twenty-five (25) pages in length without permission of the judge or magistrate judge who will hear the motion. No reply memorandum shall exceed ten (10) pages without leave of the judge or magistrate judge who will hear the motion.

6. A Mandatory Settlement Conference shall be conducted on ***August 27, 2008*** at **2:00 p.m.** in the chambers of Magistrate Judge Nita L. Stormes. Counsel or any party representing himself or herself shall submit confidential settlement briefs directly to chambers no later than ***August 21, 2008***. The Court may schedule additional settlement conference(s) at the parties' request. **All parties are ordered to read and to fully comply with the attached SETTLEMENT CONFERENCE PROCEDURES.**

7. Counsel shall file their Memoranda of Contentions of Fact and Law and take any other action required by Local Rule 16.1(f)(2) on or before ***March 9, 2009***.

8. Counsel shall comply with the pre-trial disclosure requirements of Federal Rule of Civil Procedure 26(a)(3) on or before ***March 9, 2009***. Failure to comply with these disclosure requirements could result in evidence preclusion or other sanctions under Federal Rule of Civil Procedure 37.

9. Counsel shall meet and take the action required by Local Rule 16.1(f)(4) on or before ***March 16, 2009***. At this meeting, counsel shall discuss and attempt to enter into stipulations and agreements resulting in simplification of the triable issues. Counsel shall exchange copies and/or display all exhibits other than those to be used for impeachment. The exhibits shall be prepared in accordance with Local Rule 16.1(f)(4)(c). Counsel shall note any objections they have to any other parties' Pretrial Disclosures under Federal Rule of Civil Procedure 26(a)(3). Counsel shall cooperate in the preparation of the proposed pretrial conference order.

10. The Proposed Final Pretrial Conference Order, including objections to any other parties' Federal Rule 26(a)(3) Pretrial Disclosures shall be prepared, served and lodged with the Clerk of the

Court on or before ***March 23, 2009***, and shall be in the form prescribed in and in compliance with Local Rule 16.1(f)(6).

11. The final Pretrial Conference is scheduled on the calendar of Chief Judge Irma E. Gonzalez on ***March 30, 2009*** at ***10:30 a.m.*** in Courtroom One.

12. The dates and times set forth herein will not be modified except for good cause shown.

13. Plaintiff's counsel shall serve a copy of this order on all parties that enter this case hereafter.

DATED: June 3, 2008

Nita L. Stormes

Hon. Nita L. Stormes
U.S. Magistrate Judge

CHAMBERS OF MAGISTRATE JUDGE NITA L. STORMES

SETTLEMENT CONFERENCE PROCEDURES

ATTENDANCE: All parties, adjusters for insured defendants, and other representatives of a party **having full and complete authority to enter into a binding settlement**, and the principal attorneys responsible for the litigation, must be present and legally and factually prepared to discuss settlement of the case. Full authority to settle means that the individuals at the settlement conference be authorized to fully explore settlement options and to agree at that time to any settlement terms acceptable to the parties. *Heileman Brewing Co., Inc. v. Joseph Oat Corp.*, 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered discretion and authority" to change the settlement position of a party. *Pitman v. Brinker Int'l, Inc.*, 216 F.R.D. 481, 485-486 (D. Ariz. 2003). One of the purposes of requiring a person with unlimited settlement authority to attend the conference is that the person's view of the case may be altered during the face-to-face conference. *Pitman*, 216 F.R.D. at 486. Limited or sum certain authority is not adequate. *Nick v. Morgan's Foods*, Inc., 270 F.3d 590, 595-597 (8th Cir. 2001). Failure of any of the aforementioned to appear **in person** will result in the imposition of sanctions. Where settlement authority rests with a governing body, counsel shall propose special arrangements in advance for securing timely authority to settle.

SETTLEMENT CONFERENCE BRIEFS: All parties are required to lodge a **confidential** settlement brief **three court days** prior to the Settlement Conference. Settlement briefs should not exceed ten (10) pages in length, double spaced, exclusive of exhibits, if any. Copies of all documents that might enhance the productivity of negotiations (e.g., contracts, key correspondence or memos, reports of experts, photos, medical bills, wage loss statements, selected pages from deposition transcripts or responses to other discovery) should be attached as exhibits to the settlement briefs with significant portions highlighted for easy reference. Parties may also attach as exhibits helpful judicial opinions and information about the settlement or judgment value of comparable cases.

*** * * ***

IN ADDITION TO THE ABOVE INFORMATION, EACH BRIEF SHALL SET FORTH AT A MINIMUM, THE FOLLOWING "REQUIRED" CONFIDENTIAL INFORMATION:

*** * * ***

(1) A brief analysis of the key issues involved in the litigation;
(2) A description of the strongest and weakest legal and factual points in the party's case;
(3) A description of the strongest and weakest legal and factual points in the opponent's case;
(4) The status of any settlement negotiations, including the last settlement proposal made by each party; and
(5) The settlement proposal that the party is willing to make in order to conclude the matter and spare the further expense of litigation.

Parties should hand deliver or mail the **original only** of settlement briefs directly to chambers. FAX briefs will not be accepted. Briefs must be **received in chambers** no later than **three (3) court days** before the Settlement Conference. ***Settlement briefs are confidential and shall not be served on opposing parties nor shall they be filed with the Clerk of the Court***. Briefs submitted by mail should be sent to:

Honorable Nita L. Stormes
United States Magistrate Judge
U.S. Courthouse
940 Front Street, Room 1118
San Diego, California 92101-8921